

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILMAR ANDERSON NASH,

Defendant-Appellant.

UNPUBLISHED
December 4, 2001

No. 226295
Cass Circuit Court
LC No. 99-009740-FC

Before: White, P.J., and Talbot and E.R. Post*, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for first-degree criminal sexual conduct. MCL 750.520b(1)(b). We affirm.

On appeal, defendant argues that the trial court abused its discretion in denying his motion for a new trial based on jury misconduct. Defendant asserts that a juror failed to disclose a similar incident involving her family, and that she received improper communications during the trial.

This Court will review a trial court's ruling on a motion for new trial for abuse of discretion. *People v Jones*, 236 Mich App 396; 600 NW2d 652 (1999). Jurors are presumptively competent and impartial, and the party alleging the disqualification bears the burden of proving its existence. *People v Johnson*, 245 Mich App 243, 256; 631 NW2d 1 (2001). A juror's promise to keep matters of her personal life separate from defendant's case is sufficient to protect defendant's right to a fair trial. *Id.* When information potentially affecting a juror's ability to act impartially is discovered after the jury is sworn, defendant is entitled to relief only if defendant was actually prejudiced by the presence of the juror, or the juror was properly excusable for cause. *People v Daoust*, 228 Mich App 1, 9; 577 NW2d 179 (1998).

The juror was never asked about her family's experience with similar sex crimes. Where she swore that she could decide the case fairly based on the evidence, defendant's right to a fair trial was protected. *Johnson, supra.*

There is no showing that the trial court erred in finding that the juror did not bring extrinsic evidence into the jury room. Although the juror may have committed misconduct by

* Circuit judge, sitting on the Court of Appeals by assignment.

discussing the case during the trial, there is no showing that her conduct prejudiced defendant's right to a trial before a fair and impartial jury. *People v Fetterley*, 229 Mich App 511, 544-545; 583 NW2d 199 (1998).

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post